

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

GEORGE C. SWINYER Jr.,,

Plaintiff,

v.

BALINDA COLE, et al.,,

Defendants.

Case No. C05-5610 FDB

ORDER ADOPTING REPORT AND  
RECOMMENDATION DISMISSING  
DEFENDANT CLARK COUNTY  
FROM THIS ACTION WITH  
PREJUDICE

The Magistrate Judge recommends that this 42 U.S.C. § 1983 Civil Rights action be dismissed with prejudice as to Clark County, the sole remaining defendant in this action, on the basis the action is time barred.


As detailed by the Magistrate Judge, Plaintiff did not respond to Clark County's motion for summary judgment. Although not necessary for a determination of this matter, pursuant to local Rule 7 failure to respond to a motion may be considered an admission the motion has merit. The actions complained of occurred in January and February of 1996 while Plaintiff was a minor. The statute of limitations was tolled until Plaintiff reached the age of majority, November, 16, 1996. An additional two days of tolling occurred while Plaintiff was in custody on a criminal charge. See, Bianchi v. Bellingham Police Dept., 909 F.2d 1316 (9<sup>th</sup> Cir. 1990) Washington has a three-year statute of limitations that is applicable to this civil rights action. See, Rose v. Rinaldi, 645 F.2d 546 (9<sup>th</sup> Cir.

1 1981). Thus, the Plaintiff had until November 18, 1999 to file a cause of action for civil rights  
2 violations that occurred while he was a minor. This action, not being filed until August 5, 2005, is  
3 time barred.

4 The Court, having reviewed the Report and Recommendation of the Hon. J. Kelly Arnold,  
5 objections to the Report and Recommendation and the remaining record, does hereby find and  
6 ORDER:

- 7 (1) The Court adopts the Report and Recommendation;
- 8 (2) Motion for Summary Judgment by Defendant Clark County [Dkt # 35] is **GRANTED**,  
9 and the case dismissed as to this defendant with prejudice;
- 10 (3) The Clerk is directed to enter judgment in favor of defendants;
- 11 (4) The Clerk is directed to send copies of this Order to Plaintiff, counsel for Defendants,  
12 and to the Hon. J. Kelly Arnold.

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14 DATED this 23<sup>rd</sup> day of August

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18 FRANKLIN D. BURGESS  
19 UNITED STATES DISTRICT JUDGE  
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